

2005 ENVIRONMENTAL NEGOTIATIONS COMPETITION  
CALIFORNIA STATE BAR  
ENVIRONMENTAL LAW SECTION

**RULES OF THE NEGOTIATION COMPETITION**

**1. ELIGIBILITY**

All law schools in California are eligible to enter a maximum of one team each, composed of two law students, each of whom has completed at least one year of law school. Additional teams may be entered pursuant to Rule 12. To enter the competition, the approval of the law school's dean must be obtained. It is recommended, but not required, that a faculty member agree to serve as an adviser. Entry forms must be postmarked no later than January 28, 2005, and sent to the State Bar of California Environmental Law Section, Attention Edward Bernard. Each school may select its entrants in any way it chooses. The identity of the students on each team must be designated and communicated to the State Bar in the method set forth on the registration form no later than February 22, 2005. Acceptance of entry forms postmarked later than January 28, 2005, or of any individual entrants whose identity has not been disclosed to the State Bar by February 22, 2005, is at the discretion of the Negotiation Competition Subcommittee of the Environmental Law Section of the State Bar of California ("the Subcommittee").

**2. NEGOTIATION FORMAT**

Prior to the competition, each participating school will receive one negotiation fact pattern. This fact pattern will consist of:

- a. A common set of facts known by all participants; and

- b. Confidential information known only to the participants representing a particular party.
- c. Legal background material or citations that may be provided to participants only by the Competition Subcommittee.

While teams do not need a thorough understanding of the underlying area of substantive law, it is important that they have a have a good understanding of how the law applies to the particular facts of this situation. In preparing for the competition, participants should do whatever legal research they believe is necessary or appropriate. However, participants should not prepare or generate any additional facts separate from the common set of facts provided to all participants. Any additional facts introduced or submitted during the competition may be grounds for penalty. Judges will have access to all fact pattern materials provided to participants.

The competition will consist of two preliminary rounds and one final round.

Each team will represent the same (or a similarly aligned) party in the preliminary rounds. Each preliminary round will be 100-minutes, with the time divided as follows: a 60-minute negotiation session (which may include one 5-minute break per team); a 10-minute period for teams to analyze their performance in private; and a 30-minute period of self-analysis and feedback from the judges (15 minutes per team). During the negotiation session, the teams will negotiate directly with each other (i.e., without the assistance of any third-party neutral). The two preliminary rounds will take place in the morning and early afternoon of the competition.

Following the preliminary rounds, four teams will be selected to participate in the final round, pursuant to Rule 14. The final round will be two hours, with the time divided as follows: a

75-minute negotiation session (which may include one 5-minute break per team); a 10-minute period for teams to analyze their performance in private; and a 30-minute period of self-analysis and feedback from the judges (15 minutes per team).

As noted above, each team may take one break of no more than 5 minutes during each round. The 60-minute negotiation period will continue during any such break. If the team calling the break specifically requests, both teams must leave the room during the break.

Because of the potential for disruption of the competition, faculty advisers and all others electing to observe the negotiations are prohibited from leaving the room from the beginning of each negotiation session through the end of the negotiation session. Coaches/mentors and faculty advisors are permitted to remain in the room only for the self-analysis period and feedback session for the team they assisted. In addition, all electronic equipment, including, but not limited to, cell phones, pagers, and personal data assistants, must be turned off and must not be checked for incoming messages.

Responsibility rests with the student participants for keeping time and for adherence to allotted time periods for negotiating sessions and breaks. However, if resources and volunteers are available, timekeepers or timekeeping devices may be provided, but no individual identified with a participant may act as timekeeper in a negotiation involving such participant. Decisions by the judges as to elapsed time are final and non-reviewable. The judges will attempt to provide participants with a “ten-minute” warning prior to the expiration of the negotiation period; however, the warning may not be provided in all instances and thus participants should keep a careful watch on the time.

Responsibility for timekeeping during the self-analysis periods rests jointly with the

participants and the judges, each having the responsibility to terminate the period at the end of 15 minutes. The team with the letter designation closest to the beginning of the alphabet will go first in the self-analysis.

### 3. **SELF-ANALYSIS & FEEDBACK**

Following the 10-minute preparation for self-analysis, each team will have 15 minutes in which to analyze its performance in the negotiation for the judges. This will take place outside the presence of the opposing team. Students will begin this 15-minute period by answering, in the presence of the judges, the following questions: (1) “In reflecting on the entire negotiation, if you faced a similar situation tomorrow, what would you do the same and what would you do differently?” (2) “How well did your strategy work in relation to the outcome?”

The team should also be prepared to respond to questions from the judges concerning the team’s performance. In addition, the team might use this as an opportunity to explain why it chose a particular approach or even a specific tactic. The judges will provide students with feedback on their performance during the negotiations. The judges may take into consideration for scoring purposes anything said during this session.

### 4. **COMPETITION SCHEDULE**

The competition consists of three rounds: two preliminary rounds in which all teams participate, and a final round in which four teams participate. This schedule is subject to adjustment at the discretion of the Subcommittee.

#### **Morning Schedule**

8:30 - 9:00	Hospitality suite
9:00 - 9:15	Opening remarks, welcome, and team orientation
9:15 - 9:30	Judges' briefing
	Team orientation
9:30 - 10:30	Round 1 Negotiation. [Each side may request a 5-minute break during this 60-minute period, and any such break will not extend the time.]
10:30 - 10:40	Preparation for self-analysis. (Judges begin filing out score sheets and comment sheets)
10:40 - 11:10	30-minute self-analysis.
11:10 - 11:20	Judges complete score sheets and comment sheets.
11:10 - 11:30	Competition Break
11:30 - 12:30	Round 2 Negotiation. See above regarding breaks.
12:30 - 12:40	Preparation for self-analysis. (Judges begin filing out score sheets and comments sheets.)
12:40 - 1:10	30-minute self-analysis.
1:10 - 1:20	Judges complete scores sheets and comment sheets and decide on final ranking of teams

*Break for lunch, scoring, afternoon assignments [Lunch will be provided]*

#### **Afternoon Schedule**

1:30	Announcement of finalists.
1:30-2:45	Preparation for Final Round
2:45 - 4:00	Final Negotiation Round . Each side may ask for one 5-minute break during this 75-minute period, and any such break will not

extend the time.

4:00 - 4:10	Preparation for self-analysis. (Judges begin filing out score sheets and comment sheets).
4:10 - 4:40	30-minute self-analysis.
4:40 - 4:50	Judges complete score sheets and comment sheets.
5:00	Winners announced.

5. **TEAM ORIENTATION**

Every effort will be made to ensure that the fact pattern and rules are clear. The competition administrator shall organize concurrent orientation sessions prior to each round.

All student participants representing a particular side will meet together and be afforded the opportunity to ask questions. This session will be held while the judges are being briefed. No one other than the student participants, their coaches/mentors and person(s) conducting the orientation will be permitted to attend.

The competition administrator will have complete discretion in answering questions related to the fact pattern and rules. However, participants are prohibited from creating, adding, or introducing any new facts to the fact pattern.

Because teams representing each side will meet separately, if one group raises a question regarding the general background information (i.e., the information known by both sides), any clarification will be communicated to the other group and to the judges. As in any negotiation session, the facts are subject to reasonable interpretation by the parties. Whether a team's interpretation is reasonable is not a matter that should be resolved by the person conducting the orientation session. Questions of reasonableness of an interpretation

are entirely within the discretion of the judges and are not reviewable.

Submission of inquiries relating to the simulated fact patterns in advance of the orientation session must be in writing. Under no circumstance will additional facts be provided, and inquiries will be accepted only if absolutely necessary—as determined by the Subcommittee — to clarify a bona fide and fundamental question. In no event, however, will a request for clarification be entertained by the Subcommittee unless received in writing by the Competition Administrator at the San Francisco office of the State Bar of California Environmental Law Section by 3 p.m. on March 18, 2005. Fax submissions will be accepted at (415) 538-2368, attention Edward Bernard, or email at [edward.bernard@calbar.ca.gov](mailto:edward.bernard@calbar.ca.gov). The response to inquiries (as well as the actual inquiry) will be provided to all participants; however, the identity of the party seeking clarification will remain confidential.

6. **JUDGES AND JUDGING CRITERIA**

Each round will be observed and evaluated by a panel of two judges. The number of judges may be reduced at the sole discretion of the competition administrator.

Teams will be judged on eight categories: (1) preparation - law, facts, and options available (10 possible points); (2) preparation - negotiation strategy and tactics (10 points); (3) execution of strategy; adaptability, flexibility, and creativity (10 points); (4) outcome of the negotiation (10 points); (5) oral presentation (6 points); (6) teamwork (6 points); and (7) ethics (6 points). The maximum possible score in a round is 58 points. In each of the categories, there is a “neutral” score (“5” in category with a 0 to 10 scale and “3” in a category with a 0 to 6 scale), awarded if nothing strikes the judges positively or negatively about a team’s performance in the category, or if the positive and negative are equally

balanced.

In the “preparation – law, facts, and options available” category (10 points), judges will assess whether the team understood the law and the facts; whether it was able to apply the law to the prescribed set of facts and frame appropriate legal arguments; whether it realistically assessed the implications of the options available to resolve the matter; and whether the team thought of creative solutions for the problems it faced. A well-prepared team will be well versed in the facts and the law, understand the reasonable range of settlement options, have anticipated its opponents’ arguments, and have realistically assessed the strengths and weaknesses of its own position and its opponents’ position.

In the “preparation – negotiation strategy and tactics” category (10 points), the judges will assess things such as how well the team had prepared for the negotiation by selecting a strategy for the negotiation (or for individual issues, if different strategies were used for different issues); whether the strategy fit the facts, the law, the client’s objectives, and the team members’ negotiating style or styles; whether the team anticipated the strategy and tactics of the opposing team; and whether the team thought of creative approaches to the negotiation.

In the “execution of strategy” category (10 points), the judges will assess how well the team: executed its selected strategy; employed effective tactics, detected the other side’s strategies and tactics; found creative solutions to problems; and was able to adapt and react to new information, unexpected moves by the other side, and other developments during the course of the unfolding negotiation.

In the “outcome of the negotiation” category (10 points), the judges will assess how



well the final outcome of the negotiation advances the interests of the team's client. It is understood, however, that one team cannot control whether an agreement is reached; if the other side is simply intransigent, no amount of negotiating skill can bring about an agreement. The judges will be instructed not to penalize a team for rejecting a proposed settlement that is worse, from the team's client's point of view, than no agreement at all. The goal of the competition is to demonstrate the teams' negotiation skills; therefore, wholesale "take it or leave it" positions are discouraged.

The "oral presentation" category (6 points) will assess the articulateness, clarity, persuasiveness, and effectiveness of the team's oral presentation.

In real negotiations, one member of a team of two lawyers might do most or all of the talking, either by plan or as a result of the flow of the negotiation. However, to make this competition educationally valuable, and because real negotiations often involve a division of labor, the student teams are asked to divide the speaking responsibilities relatively evenly between the two team members. The "teamwork" category (6 points) assesses how effective the team members were in sharing responsibility, backing each other up, not undercutting each other, and generally working together as a team.

Ethics (6 points). In most sessions, the Subcommittee expects the score for both teams in the "ethics" category to be "3," the neutral score. Nonetheless, ethical issues may arise. If a team is scored very low (1 or less) for an ethical lapse, the judges will alert the Subcommittee, which, pursuant to Rule 10, may decide to disqualify the contestants.

## 7. **BRIEFING OF JUDGES**

Judges will be briefed before the first morning round and before the afternoon round in conformity with the Negotiation Competition Instructions for Briefing Judges.

8. **PERMISSIBLE ASSISTANCE**

The team coach/mentor or faculty adviser may advise the team in its planning and preparation for the competitions, including the final round. No one, including team coaches and faculty advisers, however, may give advice or instructions to, or attempt to communicate in any way with, any of the participants during the period from commencement of the participants' negotiation session through completion of the self-analysis and final scoring period for that negotiation session. No participants or other persons identified with a participant may attend a negotiation session of any other team (apart from the session that the team itself is participating in), and only coaches/mentors and faculty advisors of the team which they assisted are permitted to attend the self-analysis period and feedback session for the team of which they assisted. Nor may the participants, their coaches, faculty advisors, or any other person connected with a team communicate with another of its school's teams where that school has more than one team entered in the competition, until all of that school's teams have completed the round.

The mere act of communication, receipt of information, or attendance proscribed by this rule will constitute a violation, regardless of the substance thereof and regardless of whether initiated by a participant or by any other person. Violation of this rule will result in disqualification. See Rule 10 for procedures. Harmless error will not be a defense to a complaint based on violation of this rule, because of the appearance of impropriety occasioned even by casual exchanges unrelated to the substance of the negotiation.

9. **TEAM IDENTIFICATION AND PAIRING ROUNDS**

Each team will be assigned a random letter by the competition administrator. The names of team members' schools are not to be divulged to the judges of the morning rounds until the second round score sheets have been collected. In the unlikely event that a judge asks a team member which school the team member represents, the team member should respond that the rules do not permit the divulging of that information until the competition is completed.

The competition administrator will randomly match opposing sides for the first and second rounds. No team will negotiate against the same team in both the first and second rounds of the competition. Furthermore, if there is more than one team per school, the competition administrator shall vary the random selection in order to avoid placing teams from the same school in the same bracket in a round.

10. **VIOLATIONS**

Any serious ethical lapses and/or any violations of these rules that may affect the results of the competition will be resolved on the day of the competition by a majority vote of the members of the Subcommittee present at the competition. The decision of the Subcommittee shall be final and non-reviewable.

11. **PARTICIPANT EXPENSES**

No costs incurred by participants in the competition, including travel, lodging and incidental costs, will be reimbursed by the State Bar of California Environmental Law Section. This Section 11 shall not apply to judges.

12. **ADDITIONAL TEAM: UNEVEN NUMBER OF REGISTERED TEAMS OR WHERE SPACE PERMITS**

The competition administrator may permit one or more additional eligible teams to participate in the competition if either the number of teams registered does not equal a multiple of two, or if there is additional interest and available space at the discretion of the competition administrator. At the option of the competition administrator, such additional teams may represent any school participating in the competition. Any additional team must otherwise qualify for participation in every respect; however, only one side of the simulated controversy will be represented by students competing for the same school.

13. **FAILURE OF REGISTERED TEAM TO APPEAR ON THE DAY OF THE COMPETITION**

There is always the possibility that because of illness or other emergency a team will not appear on the day of the competition. In this unlikely event, the competition administrator may request that another registered team volunteer to split apart to compete as single-person teams during the preliminary rounds of the competition. Only those teams representing the side of the team that failed to appear will be eligible for participation as individuals. If more than one team volunteers, the team will be chosen by lot. If no team volunteers, the team will be chosen by lot from among all teams representing the side of the team that failed to appear. If one of the single-person teams qualifies for the final round of the regional competition, both team members will proceed to the finals. In the event a single-person team under this rule begins competing, the absent team forfeits.

14. **SCORING**

The competition will be judged and scored in accordance with the Criteria for Judges. At the end of the two preliminary rounds, the teams will be ranked according to each team's cumulative score from the preliminary rounds. [A single score shall be assigned for each round, based on the average of the individual scores assigned by the judges of that round.] The four teams with the highest scores will proceed to the final round. The final round will involve new confidential instructions.

The first-place team and the runner-up will be determined based on the best cumulative score from the preliminary and final rounds, and announced immediately following tabulation of results. The first-place team will receive a cash prize of \$1,000 and recognition in the State Bar Environmental Law Section Newsletter. The runner-up team will receive a cash prize of \$500 and recognition in the State Bar Environmental Law Section Newsletter.

15. **TIE BREAKING PROCEDURE**

If it is necessary to break a tie to determine the four teams advancing to the final round or to determine the first and second place rankings in the final round, the tie will be broken by choosing the team achieving the best (highest) score in the Outcome of the Session category. If a tie still remains, the tie shall be broken by a coin toss.

16. **CONTROLLING LAW**

For purposes of the competition, assume that federal and California law apply, as appropriate under the circumstances.

17. **INTERPRETATION OF THESE RULES**

The competition administrator will resolve any disputes concerning the interpretation

of these rules, or of the judging rules. The competition administrator's interpretation shall be final.